reach over into the internal affairs of the State.[10] If this be questioned, does not the clause granting to Congress power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers"[11]—meaning delegated powers—expressly authorize Congress to do this?

Although the Court has continually denominated a regulation of a purely domestic aspect a regulation of interstate commerce, as a matter of fact, no amount of subtlety of argument can make it so.[12] It is difficult to see why the Court should be reluctant to acknowledge the fact that such is not a regulation of interstate commerce, when its validity can be consistently sustained on the "necessary and proper" clause. That this clause is not mere surplusage, but amounts to a delegation of power itself seems to be a fair construction on the theory that effect must be given to all the provisions of the instrument.[13]

In the recent case of *Houston, E. & W. T. Ry.* v. *United States* (1914) 34 Sup. Ct. Rep. 833, known as the *Shreveport Rate Case,* the Court held that the Interstate Commerce Commission has power to control rates maintained by the carrier in strictly intrastate transportation. From the facts in the case it will be seen that to deprive Congress of this power would be to permit a State to place a burden upon interstate commerce, the very harm sought to be remedied by the Commerce Clause.[14] The decision is significant in that the Court has at last openly acknowledged the principle that Congress has the power to reach into and touch the internal affairs of a State without resorting to the refinement of designating such action a regulation of interstate commerce. But as to the proposition that this power flows from the "necessary and proper" clause, superadded to the Commerce Clause, the Court is silent.

MODERN LAW OF DOWER.—Although dower is an institution so ancient that the sources of its origin have never been traced,[1] the right has survived in many of our States much as it was at common law. The widow's interest is limited to a life estate in one-third of all the realty of which her husband was seized of an estate of inheritance during coverture.[2] The right is based upon sound and humane principles, but there are two features of common law dower which make it

[10]The history of congressional regulation under the Commerce Clause shows clearly that Congress has been allowed to exercise this right. See 9 Columbia Law Rev. 38, 45; Prentice and Egan, Commerce Clause, 185; Pedersen *v.* Delaware, L. & W. R. R. (1913) 229 U. S. 146.

[11]U. S. Const., Art. 1, § 8, subd. 18.

[12]In Pedersen *v.* Delaware Ry., *supra,* the Court held that a railroad employee carrying some bolts to be used in repairing a bridge of an interstate commerce road is engaged in interstate commerce. That this is unfounded in fact, is self-evident.

[13]McClain, Constitutional Law, 41, 42; 1 Willoughby, Constitution, §§ 31, 33.

[14]See note 1; also Louisville & N. R. R. *v.* Eubank (1902) 184 U. S. 27, 35, in which State regulation of rates which directly interfered with interstate rates prescribed by the Interstate Commerce Commission, was declared void.

[1]Scribner, Dower (2nd ed.) 1, 5; see Wright *v.* Jennings (S. C. 1829) 1 Bailey 277; Combs *v.* Young (Tenn. 1833) 4 Yerg. 218, 227.

[2]2 Bl., Comm. *129.

seem archaic under present-day conditions. In the first place, since a wife's vested interest is limited to real estate, she may be left entirely without resources if he die possessed only of personalty;[3] and secondly, the dower encumbrance is a constant danger to innocent purchasers and mortgagees, since real property, which in feudal times remained in the same family for generations, has now become an object of commercial intercourse and exchange to almost the same extent as personalty. To protect these parties, statutes have been enacted in several jurisdictions limiting the dower right to all lands of which the husband died seized,[4] and in England, the land of its origin, dower has become a mere contingent interest, since the right attaches only to such lands as the husband may not have disposed of during his lifetime or devised by will.[5] In other jurisdictions, statutes have extended the widow's vested interest so as to include some fraction of her husband's personal estate as well.[6] In the community States, this rather arbitrary and strange distinction between real and personal property in the case of dower has never been observed, and the widow takes an absolute estate in one-half of all the community property remaining after the payment of debts.[7]

This wave of statutory reform has not, however, affected dower in New York, where the Revised Statutes have embodied the law on the subject substantially as it was at common law,[8] and the maxim that the dowress is a favorite of the law still prevails.[9] Accordingly, a devise or bequest is presumptively in addition to dower, and will not be held in lieu thereof in the absence of a clear and unequivocal indication of such intent.[10] This principle was applied in the recent case of *Roessle* v. *Roessle* (App. Div., 1st Dept. 1914) 148 N. Y. Supp. 659, in which the testator, having made his wife executrix, left the remainder of all his property to her and two children, share and share alike. Upon an application by the widow to assert her dower rights, the court held that there was no inconsistency between the terms of the will and the claim of dower sufficient to show an intention on the part of the testator to put her to an election. The case

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[3]At early common law, the widow and children were entitled to a distributive share of the testator's personal estate. 2 Bl., Comm. *492. But these rights were gradually lost, and, as the law has stood for several centuries, the husband may now dispose of his personal property without restriction. O'Hara *v.* Dever (N. Y. 1866) 2 Abb. Pr. N. S. 418; Stewart, Marriage & Divorce, § 462; but see Griffith *v.* Griffith's Exrs. (Md. 1798) 4 Harr. & McH. 401.

[4]See Stewart *v.* Stewart (1824) 5 Conn. 317; Combs *v.* Young, *supra.* Other statutes increase the widow's life interest to an estate in fee. See Cheney *v.* Cheney (1912) 110 Me. 61; Graves *v.* Fligor (1894) 140 Ind. 25; Purcell *v.* Lang (1896) 97 Ia. 610. In Minnesota, these two features have been combined. See Morrison *v.* Rice (1886) 35 Minn. 436.

[5]See Act, 3 & 4 Wm. IV, c. 105; Lacey *v.* Hill (1875) L. R. 19 Eq. 346.

[6]See Cheney *v.* Cheney, *supra.*

[7]Beard *v.* Knox (1855) 5 Cal. *252; see Deutsch *v.* Rohlfing (1912) 22 Colo. App. 543.

[8]1 Rev. Stat. 740, *et seq.,* now embodied in N. Y. Consol. Laws of 1909, Real Property Law, Art. 6. See Fowler's Real Property Law (3rd ed.) 696, 697.

[9]See Lasher *v.* Lasher (N. Y. 1852) 13 Barb. 106; Konvalinka *v.* Schlegel (1887) 104 N. Y. 125, 129.

[10]Konvalinka *v.* Schlegel, *supra;* Church *v.* Bull (N. Y. 1845) 2 Den. 430; Closs *v.* Eldert (1898) 30 App. Div. 338.

was clearly decided in conformity with the present state of New York law, since the mere fact that a widow derives advantage from the terms of a will is no indication that the testator intends to bar her dower.[11] Cases in which the will prescribed devises of lands to the wife out of which she was entitled to dower,[12] or devises of lands on trusts,[13] have also been held not inconsistent with the dower right. If, however, the purposes of the trust require that the entire title, free from the dower interest of the widow, be vested in trustees in order to effectuate the purposes of the testator in creating it, the widow is bound to elect.[14] An example of such a trust appears in the recent case of *Matter of Springsteen* (Surr. Ct. N. Y. 1914) 86 Misc. 389, in which the testator, after leaving his wife a life estate in the house and furniture, devised and bequeathed the remainder of his property to trustees to divide the income equally between his wife and son, and the court held an election necessary. The distinctions made in such cases seem somewhat tenuous, but they help the courts to derive some settled rule for divining the intention of the testator. In some jurisdictions, statutes have so altered the common law presumption that any testamentary provision for the wife's benefit is *prima facie* in lieu of dower,[15] a rule which affords a construction more often in accord with the testator's intent.

In view of the foregoing considerations, it is obvious that common law dower is both cumbrous and inadequate. It is, therefore, to be hoped that the law of dower in New York will soon be subjected to a thorough revision, so that a substantial testamentary provision in the wife's favor may be construed to be presumptively in lieu of dower, and in the absence of such provision, that the widow may receive an absolute estate in some portion of all the property, both real and personal, of which her husband died possessed.[16]

STATUS OF INDIANS BEFORE STATE AND FEDERAL COURTS.—The status of the American Indians before the State and federal courts has been the subject of much dispute and speculation. The Indians are called aliens,[1] but, unfortunately, a number of complicating circumstances prevent them from having the same rights and liabilities as other

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[11]Matter of Fraser (1883) 92 N. Y. 239, 249. This common law presumption is also the rule in the community States. Theall *v.* Theall (1834) 7 La. 226; Herrick *v.* Miller (1912) 69 Wash. 456; see Morrison *v.* Bowman (1865) 29 Cal. 337.

[12]Lawrence *v.* Lawrence (1699) 2 Vern. 365; Rathbone *v.* Dyckman (N. Y. 1831) 3 Paige Ch. 9, 30; 2 Scribner, Dower (2nd ed.) 444.

[13]Ellis *v.* Lewis (1844) 3 Hare *310; Wood *v.* Wood (N. Y. 1836) 5 Paige Ch. 596; 2 Scribner, Dower (2nd ed.) 451.

[14]Vernon *v.* Vernon (1873) 53 N. Y. 351; see Konvalinka *v.* Schlegel, *supra*, p. 130; *cf.* Savage *v.* Burnham (1858) 17 N. Y. 561.

[15]See Warren *v.* Warren (1893) 148 Ill. 641; Griggs *v.* Veghte (1890) 47 N. J. Eq. 179.

[16]See editorial in New York Law Journal for July 24, 1914.

[1]Elk *v.* Wilkins (1884) 112 U. S. 94. By statute, 24 U. S. Stat. at L. 390, an Indian to whom an allotment in severalty has been made, or who has voluntarily separated from his tribe and adopted the habits of civilized life, Bird *v.* Terry (C. C. 1903) 129 Fed. 472, is now made a citizen of the United States who can resort to the courts as any other citizen.